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No. 85-1094

Supreme Court, U.S.
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In The
Supreme Court of the United States

October Term, 1985

Alwin E. Hopfmann, Gregory Hession, Clarence Perkins, Clarence Paulin and Beth Sullivan,
Appellants,

v.

Michael Joseph Connolly, Francis X. Bellotti, Chester G. Atkins, and the Democratic State Committee of Massachusetts,
Appellees.

On Appeal From The United States Court of Appeals For The First Circuit

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Motion Of Appellees Connolly And Bellotti To Dismiss The Appeal Or To Affirm Or, In The Alternative, Brief In Opposition To The Petition For A Writ Of Certiorari

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I. QUESTIONS PRESENTED

1. Whether the Massachusetts statutory scheme for obtaining access to the state primary ballot, which accommodates and effectuates party rules that neither defeat the purpose of a primary election system nor violate the constitutional rights of candidates and voters, violates the First and Fourteenth Amendments to the United States Constitution.

2. Whether the Massachusetts Democratic Party's 15% Rule, which is accommodated by and incorporated in the state statutory scheme, violates the First and Fourteenth Amendments to the United States Constitution.

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III. MOTION TO DISMISS OR TO AFFIRM THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Pursuant to Rule 16 of the Rules of this Court, respondents Connolly and Bellotti move that the appeal be dismissed or that the judgment of the United States Court of Appeals for the First Circuit be affirmed on the ground that it is plainly correct and the questions presented by the jurisdictional statement are so unsubstantial as not to warrant further argument.[1/]

1/ The appellants have sought to invoke the appellate jurisdiction of this Court pursuant to 28 U.S.C. §1254(2), claiming that a statute of the Commonwealth of Massachusetts has been declared repugnant to the Constitution of the United States by the First Circuit Court of Appeals. The Appellees, Secretary Connolly and Attorney General Bellotti, respectfully submit that no state statute has been invalidated and therefore the appellate jurisdiction of this court has been improperly invoked. They therefore request that this submission be treated, in the alternative, as a Brief in Opposition to the Petition for a Writ of Certiorari.

IV. STATEMENT OF THE CASE

This action again challenges both a party rule and the Massachusetts statutory scheme which incorporates it, limiting access of candidates for statewide office to the Democratic primary ballot. The appellant, a candidate for the Democratic nomination for the office of United States Senator in 1982, and four of his supporters attack the constitutionality and validity of the so-called "15% Rule"[2/] of the Massachusetts Demo-

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2/ Article Six, Section III of the Charter of the Massachusetts Democratic Party was amended in 1979, so as to read in pertinent part: "[E]ndorsements for statewide office of enrolled Democrats nominated at the Convention shall be by majority vote of the delegates present and voting, with the provision that any nominee who receives at least 15% of the convention vote on any ballot for a particular office may challenge the convention endorsement in a State Primary election."

This rule is commonly referred to as the "15% Rule."

cratic Party. That rule, which has been incorporated into the state statutory scheme, Langone v. Secretary of the Commonwealth, 388 Mass. 185, 446 N.E. 2d 43, cert. denied, sub. nom. Bellotti v. Connolly, 460 U.S. 1057 (1983), requires candidates for statewide office to obtain at least 15% of the votes on any ballot at the Democratic state nominating convention.

The rule was given effect by the State Secretary, who refused to place on the 1982 primary ballot the name of any candidate for statewide office who had failed to obtain the necessary convention vote. Mr. Hopfmann failed to obtain 15% of the convention vote in 1982 and was among those denied a place on the ballot by the State Secretary.

Hopfmann brought his quarrel with the rule to the United States District Court for the District of Massachusetts.

That Court considered motions to dismiss filed by the various defendants and plaintiffs' motion for summary judgment. Judgment was granted in favor of all defendants. The District Court's decision on the appellants' First and Fourteenth Amendment challenge was based upon the express adoption of the decision of the Massachusetts Supreme Judicial Court in Langone v. Secretary of the Commonwealth, supra, and upon this Court's summary disposition of that case, Bellotti v. Connolly, 460 U.S. 1057 (1982). Memorandum and Order of the District Court, (OB 36, at 39-41).

On appeal, the Court of Appeals for the First Circuit affirmed the District Court's judgment. Hopfmann v. Connolly, 746 F.2d 97 (1st Cir. 1984). Thereafter the appellants filed a jurisdictional

statement seeking further review. On May 18, 1985 this Court granted certiorari, vacated the decision of the First Circuit Court of Appeals to the extent that it relied upon the summary dismissal in Bellotti v. Connolly, and remanded the case for further consideration. Hopfmann v. Connolly, __ U.S. __, 105 S.Ct. 2106 (1985).

Following additional briefing, the Court of Appeals again affirmed the District Court's judgment, this time explicitly finding the decision of the lower court, based upon the reasoning articulated by the Massachusetts Supreme Judicial Court in Langone v. Secretary, supra, to be correct. Hopfmann v. Connolly, 769 F.2d 24 (1st Cir. 1985).

The appellants once again seek plenary review of the issue of the constitutionality of the Massachusetts Democratic Party's 15% Rule.

V. ARGUMENT

A. The Massachusetts Statutory Scheme For Obtaining Access To The State Primary Ballot, Which Accommodates And Effectuates Party Rules That Neither Defeat The Purpose Of A Primary Election System, Nor Violate The Constitutional Rights Of Candidates And Voters, Does Not Violate The First And Fourteenth Amendments To The United States Constitution.

The appellants' First and Fourteenth Amendment argument turns on the soundness of the reasoning of the highest court of the Commonwealth in a case this Court has already declined to review. In that case, the Massachusetts Supreme Judicial Court definitively construed the statutory scheme that provides access to the state primary ballot. Langone v. Secretary of the Commonwealth, supra.

The court reasoned that a construction of the state statutory scheme which did not effectuate party rules imposing additional requirements on gaining ballot access, could unconstitutionally deprive regular party members of their right of political association as guaranteed by the First and Fourteenth Amendments. Langone, 388 Mass. at 194. The Supreme Judicial Court found that the right of political association included the ability to guarantee that a party's nominee demonstrates a modicum of support from those who have substantial contact with the party. Langone, 388 Mass. at 193. Accordingly, the Court adopted a statutory construction that allowed political parties to supplement the statutory requirements.

Langone, 388 Mass. at 193-194.[3/]

More specifically, the court held that the state statutes encompass party rules that impose additional requirements on gaining access to the primary ballot, such as the 15% Rule of the state Democratic party. Langone, 388 Mass. at 195. ("[W]e treat the rule as though it were expressly contained in G.L. c. 53").

3/ The Attorney General had challenged the validity of the 15% Rule, arguing that G.L. c. 53 set the only requirements for primary ballot access, in a companion case consolidated within Langone v. Secretary of the Commonwealth, 388 Mass. 185 (1983). The Supreme Judicial Court's decision to the contrary, on which future review was denied in this Court, Bellotti v. Connolly, supra. is binding on the Attorney General and requires his defense of the 15% Rule in this litigation.

That statutory construction is binding not only on the state officers who are appellees in this case, but also upon the federal courts construing the same statute. Gurley v. Rhoden, 421 U.S. 208, (1975); Mullaney v. Wilbur, 421 U.S. 684, 691, (1975).

The issue then is whether the state statutory scheme, which incorporates and accommodates party rules, violates the right of political association held by Mr. Hopfmann and his supporters.

The reasoning of the state court is pivotal on this issue as well, because both lower federal courts explictly adopted it in upholding the position of

the state appellees.[4/] In a sense, then, this petition merely presents an inappropriate collateral attack on a state court decision this court has previously declined to review. The appellees submit that, once the state statutory scheme was authoritatively construed to include the party rule, the constitutionality of the procedure for gaining access to the primary ballot became evident.

4/ The District Court specifically accepted the reasoning and conclusions of the Massachusetts Supreme Judicial Court in Langone, supra. Memorandum and Order of the District Court (OB 36 at 39) ("I am in agreement with the decision of the Supreme Judicial Court upholding the Rule's validity, and for the reasons expressed therein. Extensive repetition of those reasons is unnecessary."). On appeal, the First Circuit Court of Appeals also relied upon the state court decision as the appropriate articulation of the constitutional analysis. Hopfmann v. Connolly, 769 F.2d 24 at 25 (App. AA 1 at 5) ("Like the district court below, we agree with the analysis of this issue, by the Massachusetts Court, and do not consider it neccessary to repeat that court's discussion at length.").

The appropriate analysis begins with the application of traditional constitutional principles in considering the validity of the statutory scheme. First, it was quickly and appropriately recognized that the enforcement of a party rule is "state action subject to constitutional scrutiny." Langone, 388 Mass. at 195 (citations omitted).

Second, the court found that the rights of candidates and their supporters to obtain ballot access are inextricably intertwined and fundamental. Langone, 388 Mass. at 196. But the statutory scheme, incorporating party rules such as the Democratic Party's 15% Rule, considered in a "realistic light," was found by the court not to have a sufficient impact on the candidates' rights to warrant strict scrutiny. Id. at 197. The statutory

scheme effectuating the party rule was then found to be rationally related to the legitimate objectives of protecting the right of the Democratic Party and its members to associate and of maintaining the integrity and stability of the existing political parties. Id. at 198. Accordingly, the constitutionality of the statutory scheme was upheld.

As demonstrated in the ensuing discussion of the validity of the 15% Rule itself, this reasoning is clearly supported by a long line of prior decisions rendered by this Court and does not present a substantial federal question. There is no split of authority between the circuits on these issues. There are no special and important reasons which would justify further review. Hence plenary consideration by this Court is unnecessary.

B. The Masachusetts Democratic Party's 15% Rule, Which Is Accommodated By And Incorporated In The State Statutory Scheme Does Not Violate The First And Fourteenth Amendments To The United States Constitution.

A second and subsidiary issue is presented as to the constitutionality of the 15% Rule itself. The state officials in this action are not the proper parties to offer the primary defense of the party rule and defer to the party and its chairman, who are also appellees, to offer those arguments. The state appellees note that the Supreme Judicial Court's decision, adopted by both the District Court and the Court of Appeals, considered the validity of the 15% Rule and found that it did not impose a significant burden on the constitutional rights of candidates or their supporters.

The right asserted by Mr. Hopfmann and the other petitioners is the right to obtain a place on the Democratic state primary ballot. That right, of course, is circumscribed by the legitimate interest of the state in ensuring that candidates that appear on the ballot have demonstrated a significant modicum of support. Jenness v. Fortson, 403 U.S. 431, 442 (1971). The injury that is alleged results from requiring candidates for the Democratic nomination to demonstrate a modicum of support at the state nominating convention. This is far from freezing the political status quo, found to be unconstitutional in Williams v. Rhodes, 393 U.S. 23 (1968). The burden of securing 15% of the convention vote is not more onerous than other restrictions imposed on ballot access previously

upheld by the Supreme Court. See Jenness v. Fortson, 403 U.S. 441 (1971) (upholding requiring independent candidate to obtain signatures of 5% of the eligible voters in a 180 day period); Storer v. Brown, 415 U.S. 735 (1974) (upholding a one year disaffiliation requirement for independent candidates). The 15% Rule is the type of generally applicable and evenhanded restriction that has traditionally been upheld. Anderson v. Celebrezze, 460 U.S. 780, 789 n.9 (1983).

The specific interests advanced by the state have been repeatedly recognized and upheld. This Court has recognized the rights of the Democratic party and its members to have an effective role in selecting the party's nominees. See Democratic Party of the United States v. Wisconsin, 450 U.S. 107 (1981) (recognizing the right of the national party to

seat delegates at the national convention, notwithstanding a contrary state statute). The interest of preserving the integrity of the electoral process has long been established. Roasario v. Rockefeller, 410 U.S. 752 (1973) (upholding an eight to eleven month disaffiliation requirement as necessary to prevent party raiding). Other courts have repeatedly and uniformly found that political parties must be allowed meaningful involvement in establishing voter qualifications and ballot access requirement. See, Republican Party of the State of Connecticut v. Tashjian, 770 F.2d 265 (2nd Cir. 1985) prob. juris. noted 54 U.S.C.W. 3460 (U.S.S.Ct. Jan. 13, 1986) (striking a state statute providing that only enrolled members of a political party could vote in the state sponsored primary election in light of a party rule allowing independent voters to participate in the party's primary);

Tansley v. Grasso, 315 F.Supp. 513 (D. Conn. 1970) (upholding a state statute requiring candidates to obtain 20% of a party convention vote to have their names placed on the primary ballots); Clark v. Rose, 379 F.Supp. 73 (S.D.N.Y. 1974) (upholding a statutory provision providing that an independent candidate could not run in a party's primary or receive its nomination without first obtaining the authorization of the party's state committee).

These interests, as advanced by the state, justify the burden imposed on would-be candidates. The legitimate state interest in preserving the Democratic party's role in selecting its nominees justifies the requirement that candidates be involved in the party process at the nominating convention.

Requiring candidates to obtain at least 15% of the party's convention vote is precisely tailored to protect this state interest.

Therefore, the question of the constitutionality of the 15% Rule does not present a substantial federal question and plenary review by this Court is not appropriate.

VI. CONCLUSION

For the foregoing reasons, the decision of the United States Court of Appeals for the First Circuit should be summarily affirmed and the appeal dismissed. To the extent that the appellant's pleading is treated as a Petition for a Writ of Certiorari, it should be denied.

Respectfully submitted,

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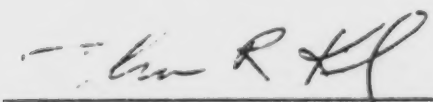

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